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1. FIRE DISTRICTS—TOWNSHIP TRUSTEES OF ANY TOWNSHIP MAY CREATE ONE OR MORE—SUCH PORTIONS OF TOWNSHIP AS THEY MAY DEEM NECESSARY—MAY PROVIDE NECESSARY EQUIPMENT FOR FIRE FIGHTING PURPOSES—SECTION 3298-54 G. C.
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SYLLABUS:

1. Pursuant to the provisions of Section 3298-54, General Code, the township trustees of any township may create one or more fire districts of such portions of the township as they may deem necessary and may in behalf of such district provide necessary equipment for fire fighting purposes.

2. Pursuant to Section 3298-55, General Code, the township trustees may levy a tax on the property of a fire district for purposes of fire protection for such district.

3. Pursuant to the provisions of Section 3298-56, General Code, the township trustees may issue the bonds of a fire district in an amount not exceeding \$20,000.00 for fire protection, but only upon approval by vote of the people in such fire district, in the manner provided by law.

4. By the terms of Section 5625-1, General Code, a fire district created pursuant to Section 5625-54, General Code, is a subdivision within the scope of the Uniform Tax Levy Law, and accordingly the trustees of a township may, pursuant to the provisions of Section 5625-15 et seq., of the General Code, submit to the electors of a fire district of such township, the question of a tax levy on the property of such fire district, in excess of the ten mill limitation imposed by Article XII, Section 2, of the Constitution of Ohio.

Columbus, Ohio, January 24, 1952

Hon. Sumner J. Walters, Prosecuting Attorney
Van Wert County, Van Wert, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"We have in Van Wert county a township called Pleasant, in which township is located the larger part of the municipality of Van Wert.

"For several years last past, the township of Pleasant has contracted with the municipality of Van Wert for fire protection for the entire township. The contract price for the fire protection has been paid out of the Pleasant Township general fund, which general fund is about eighty per cent derived from the residents of the city of Van Wert, who also pay for fire protection through the municipality. Recognizing this, it is the desire of Pleasant Township trustees as well as the municipal officials, to relieve the residents of Van Wert from the tax burden of paying for Pleasant Township fire protection out in the township. We have come to the conclusion that the proper way to do this is to have the Pleasant Township trustees establish that part of Pleasant Township outside of the municipality as a fire district, which immediately brings up the problem of financing said fire district. As I understand General Code 3298-55 authorizing a levy of taxes by the township trustees for the purpose of fire protection, such levy must be made within the ten mill limitation, which is impossible in our case, as there is no available millage within the ten mill limitation on which the trustees could levy.

"I believe that Section 3298-56 is also inapplicable in this situation, as the fire district's contract with the municipality will be for a fixed yearly rate and 3298-56 provides for the establishment of a fire department. I have reviewed your 1950 Opinions No. 2396 and No. 2692, in which you discuss my problem but do not answer it. I cannot believe that the legislature intended to create a fire district and then leave it without funds to operate, and am wondering whether or not a fire district created in accordance with Section 3298-54 is such a subdivision as may vote on additional millage outside the ten mill limitation for current operating expenses, as provided in General Code, Section 5625-15. Would you therefore please render your opinion for me, answering the following questions:

"1. Are the proceedings which I have outlined legal?

“2. May a fire district when created vote for a tax levy over and above the ten mill limitation, in accordance with General Code Section 5625-15?”

Provisions for joint action by the trustees of a township and the legislative authorities of other political subdivisions for fire protection are found in Section 3298-54, General Code. This section authorizes the organization of any part of a township into one or more fire districts. Prior to its amendment by the 99th General Assembly, that section provided that such a fire district could only be made to include territory of a township outside of a municipal corporation; but in its present form, the section provides in part as follows:

“The board of trustees of any township may by resolution whenever in their opinion it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting therefrom, create a fire district or districts *of such portions of the township as they may deem necessary* and they may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes; or may contract for such fire protection for such fire district or districts the same as provided in Section 3298-60 of the General Code for other subdivisions. The fire district or districts so created shall be given a separate name by which it shall be known and designated.”

(Emphasis added.)

The same section authorizes the trustees of any two or more townships or the legislative authority of any two or more public subdivisions or any combination thereof, to unite in the joint purchase, maintenance and operation of fire fighting equipment. It is further provided in the same section that the board of township trustees of any township or fire district or the council of any municipal corporation may purchase fire equipment and pay for the same over a period of four years, such purchase cost not to exceed \$20,000, one-fourth of the purchase price being paid in cash and the other three-fourths by notes maturing in two, three or four years respectively. It would appear that where this procedure is followed on behalf of a fire district the notes would be executed by the township trustees on behalf of the district, and the obligation would be that of the district and not of the entire township. The language of the statute on this point is:

“The board of trustees of any township or fire district or districts created by them under the provisions of this act or the council or other legislative authority of any municipal corporation, may purchase the necessary fire fighting equipment for such township, fire district or districts or municipal corporation and pay for the same over a period of four years. Such trustees, or council or legislative authority of any municipal corporation, shall be authorized to issue *the notes of the township, fire district or districts* or municipal corporation, as the case may be, signed by the trustees or council or other legislative authority and attested by the signature of the township or municipal clerk, and covering such deferred payments and payable at the times provided * * *” (Emphasis added.)

Section 3298-55, General Code, reads as follows:

“The trustees of a township are authorized to levy in any year or years a sufficient tax upon all taxable property in the township *or in a fire district or districts*, to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor and sources of water supply and materials therefor, and the establishment and maintenance of lines of fire alarm telegraph and the payment of permanent, part-time or volunteer fire fighting companies to operate same.” (Emphasis added.)

Section 3298-56, General Code, reads as follows:

“No bonds shall be issued by township trustees for the purpose of providing fire apparatus, appliances, buildings or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time or volunteer fire fighting companies to operate the same *unless approved by vote of the people* in a township, *a fire district or districts* in the manner provided by law; and in no event in an amount exceeding \$20,000.00.” (Emphasis added.)

This section clearly contemplates that the proposal to issue such bonds intended for providing fire apparatus etc., for a fire district, must be approved by a vote of the people in the fire district alone. In no event are such bonds when so authorized to exceed the amount of \$20,000.00.

Coming now to the proposition to submit to a vote of the electors of the fire district the question of levying a tax in excess of the ten mill limitation, I direct your attention to the language of Section 5625-15, General Code, which reads in part as follows:

“The taxing authority of any subdivision at any time prior to September 15, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes: * * *.”

There follow the several purposes for which such additional taxes may be levied. Included are “current expenses” and “construction or acquisition of any specific permanent improvement.”

Section 5625-17, General Code, requires the question to be submitted to the electors of the subdivision. For the purposes of the Uniform Tax Law, of which these sections are a part, “subdivision” is defined by Section 5625-1, General Code, as follows:

“(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation, township, township fire district or township waste disposal district in the state.”

This section, containing the definition above quoted, became effective September 24, 1947. The words “township fire district” or “township waste disposal district” were not in the law prior to that time.

In view of the provisions of the law to which I have just referred, there seems to be no question of the right to submit to the voters of a fire district the question of levying taxes upon the property of that district in excess of the ten mill limitation, for the purpose of the acquisition or construction of fire fighting facilities or the current operating expenses of a fire department for such district or both. In an opinion of one of my predecessors, No. 231 Opinions of the Attorney General for 1945, page 195, it was held:

4. “There is no authority in law for the submission to the voters of a fire district created pursuant to Section 3298-54, General Code, of a proposition to levy a tax upon the property of such district for the purpose of affording it fire protection.”

That opinion was based on the statute as it then stood, and its conclusion, while correct when rendered, is now changed by the amendment of Section 5625-1 above noted.

In Opinion No. 808, Opinions of the Attorney General for 1949, page 498, it was held :

“2. Township trustees may, by a resolution in conformity with the provisions of Section 5625-15 of the General Code, submit to the voters of the township or a fire district the question of taxation beyond the ten mill limitation to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of a volunteer fire fighting company, but in no event to exceed \$20,000.”

That opinion apparently was based on the provisions of Section 3298-56, General Code, which has no reference to the levy of a tax but refers only to the issuance of bonds issued by a vote of the people of a fire district in an amount not exceeding \$20,000.00. The then Attorney General apparently did not observe the change in the provisions of Section 5625-1, General Code, which included as a subdivision, a fire district.

Specifically answering your questions, it is my opinion :

1. Pursuant to the provisions of Section 3298-54, General Code, the township trustees of any township may create one or more fire districts of such portions of the township as they may deem necessary and may in behalf of such district provide necessary equipment for fire fighting purposes.

2. Pursuant to Section 3298-55, General Code, the township trustees may levy a tax on the property of a fire district for purposes of fire protection for such district.

3. Pursuant to the provisions of Section 3298-56, General Code, the township trustees may issue the bonds of a fire district in an amount not exceeding \$20,000.00 for fire protection, but only upon approval by vote of the people in such fire district, in the manner provided by law.

4. By the terms of Section 5625-1, General Code, a fire district created pursuant to Section 3298-54, General Code, is a subdivision within the scope of the Uniform Tax Levy Law, and accordingly the trustees of a township may, pursuant to the provisions of Section 5625-15 et seq., of the General Code, submit to the electors of a fire district of such town-

ship, the question of a tax levy on the property of such fire district, in excess of the ten mill limitation imposed by Article XII, Section 2, of the Constitution of Ohio.

Respectfully,

C. WILLIAM O'NEILL
Attorney General